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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

BLACK DIAMOND COMMERCIAL FINANCE, LLC,

Plaintiff,

v.

VIRGINIA CONSERVATION LEGACY FUND, INC.
and ERP COMPLIANT FUELS, LLC,

Defendants.

Chapter 11

Case No. 15-32450 (KLP)

Jointly Administered

Adv. Proc. No. 16-03105 (KLP)

VIRGINIA CONSERVATION LEGACY FUND, INC.
and ERP COMPLIANT FUELS, LLC,

Counterclaim-Plaintiffs,

v.

BLACK DIAMOND COMMERCIAL FINANCE, LLC,

Counterclaim-Defendant.

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR
AN EXTENSION OF TIME TO FILE PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Plaintiff Black Diamond Commercial Finance, LLC (“Black Diamond”), by its attorneys McGuireWoods LLP and Covington & Burling LLP, respectfully submits this Memorandum of Law in Opposition to Defendants’ Motion for an Extension of Time to File Proposed Findings of Fact and Conclusions of Law.

BACKGROUND

On June 13, 2018, the Court set the deadline for the submission of the parties’ respective proposed findings of fact and conclusions of law (“Proposed Findings”) for July 20, 2018 — 37 days after the close of trial. (6/13/18 Tr. 239:8-10.) Both parties agreed to this July 20 deadline. (*Id.* at 239:12-13.)

On July 18, 2018 — 35 days after the Court set the deadline, and a mere 48 hours before the parties’ Proposed Findings were due — Defendants’ counsel emailed Black Diamond to ask for a seven-day extension. Before this email, Defendants had given no indication that they would seek an extension of the filing deadline. When asked why they required a seven-day extension, Defendants’ counsel stated only that unspecified “commitments” had prevented them from timely “review[ing] [their] papers.” In a subsequent phone call, Defendants clarified that these “commitments” related to a July 24 hearing in the “Westinghouse bankruptcy.” That hearing, however, was noticed on June 21, 2018 — nearly a month ago, and well before the filing deadline at issue in this case. *In re Westinghouse Elec. Co.*, Case No. 17-10751 (MEW) (Bankr. S.D.N.Y.) (Dkt. No. 3468). Defendants also reference “out-of-the-country commitments” that supposedly delayed their work, but they fail to specify what those purported commitments are. (Dkt. No. 402.)

ARGUMENT

Defendants have failed to satisfy their burden of showing that an extension of the deadline for filing the parties’ Proposed Findings is merited. Under the Federal Rules of Civil Procedure, a request to extend a filing deadline must be supported by good cause.

See Fed. R. Civ. P. 6(b)(1) (“When an act may or must be done within a specified time, the court may, for good cause, extend the time.”). Such good cause is plainly lacking here.

As noted above, the parties have been on notice of the applicable filing deadline for more than five weeks. Defendants do not claim that any unforeseen circumstances have prevented them from meeting that deadline; rather, they claim that a hearing in another case prevents them from timely filing their Proposed Findings. This excuse is unavailing. Defendants’ counsel have known about this purported scheduling issue for nearly a month — since the filing of the June 21 notice of hearing referred to above. Nothing about that hearing date justifies Defendants’ counsel having waited until now to make a last-minute extension request. Defendants’ additional reference to vague “out-of-the-country commitments” is similarly unavailing.

Moreover, Defendants’ late request for an extension clearly prejudices Black Diamond. Black Diamond worked diligently to meet the Court-ordered deadline, juggling a number of other commitments and adjusting individual schedules to ensure that its Proposed Findings were submitted on time. Defendants’ decision to wait until 48 hours before the filing deadline to request an extension — despite knowing of the purported need for an extension for nearly a month — thus assured that Black Diamond would not be able to take meaningful advantage of any extension granted.

For the foregoing reasons, Defendants’ motion should be denied. The parties should be required to file their respective Proposed Findings no later than Monday, July 23, 2018 at 11:59 p.m.

Dated: July 19, 2018
Richmond, Virginia

Respectfully submitted,

By : /s/ John H. Maddock III
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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2018, I filed the foregoing document through CM/ECF, which will send a notice of such filing to all CM/ECF participants, and that I served by email a copy on the following counsel of record in this adversary proceeding:

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/s/John H. Maddock, III

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